

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1216 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

STATE OF GUJARAT

Versus

SHAMJI VERSHI SHAH THROUGH HIS HEIRS MANIBEN SHAMJI

Appearance:

MR. TS SOMPURA, instructed by
MR. D.A. BHAMBHANIA, for the petitioner.
MR JR NANAVATI for Respondent No. 1
MRS. V.K. PAREKH, A.G.P.for Respondent No. 2

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 15/04/97

ORAL JUDGEMENT

The impugned order dated 30-6-1994 passed by the Urban Land Tribunal setting aside the order dated 21-8-1979 passed by the competent authority - Urban Land Ceiling, Jamnagar declaring the excess land has been challenged by the State of Gujarat under Articles 226 and 227 of the Constitution of India. The respondents no.1

to 6 the heirs and legal representatives of deceased Shamji Vershi Shah have opposed this petition on several grounds and in support of the said grounds they have relied upon the decision rendered in case of State of M.P. etc. etc. Vs. Nandlal Jaiswal and Others etc., reported in AIR 1987 SC 251.

2. In this case, the competent authority passed the order on 21-8-1979 declaring excess land and same was challenged u/s 33 of the Urban Land (Ceiling and Regulation) Act, 196 (hereinafter referred to as the "Act") by the respondents by filing Appeal No.15/94. The Tribunal vide its order dated 30-6-1994 set aside the order of the competent authority. It is an undisputed fact that the impugned order dated 30-6-1994 passed by the Tribunal has been challenged by the petitioner in the year 1996 almost after delay of 1 year and 8 months. The High Court in the aforesaid case, has held that the writ jurisdiction is discretionary jurisdiction and the Court should be very slow in exercising such jurisdiction where the petitioner is found indolent, tardy and lethargic and has failed to explain delay satisfactorily. In this case, no satisfactory explanation has been tendered for delay of 1 year and 8 months.

3. It cannot be gain said that during the intervening period some change might have taken place whereby some rights have been created or accrued in favour of respondents and/or third parties. Despite this fact if discretionary powers are exercised it may result as injustice and inconvenience or hardships to one in whose favour rights have been created. Consequently, as a rule, the petitioner who invokes writ jurisdiction after inordinate delay does not deserve any protection under Articles 226 and 227 of the Constitution of India.

4. In this case, as stated in the affidavit-in-reply after the order passed by the Tribunal the respondents had made an application u/s 26 of the Act to the competent authority and vide letter dated 17-11-1994 the competent authority refused to exercise option for purchase of land as a result of which the respondents sold some properties to the third parties by the registered sale deed dated 22-11-1994. It is also the say of the respondents that Jamnagar Municipal Corporation has also granted building permission u/s 253-254 of the Bombay Provincial Municipal Corporation Act and accordingly construction has also been commenced. In para 8 of the affidavit-in-rely the respondents have also stated that one Nemchand Parbat Shah has purchased the land from the respondents and has entered into

agreement for further sale with third party Bipinbhai Trambaklal Vadhar in respect the land admeasuring 137.86 sq.mtrs. for consideration of Rs.2.5 lacs. Similarly, one Smt. Suryakala Raichand Shah has also entered into agreement to sell with third party for part of the land purchased from the respondents. Thus, some rights have also been created in favour of the third parties.

5. The object of exercise of discretionary powers and extra ordinary writ jurisdiction is to protect the fundamental rights and not to unsettle the things which are already settled. As discussed above, relying upon the impugned order dated 30-6-1994 the respondents have sold some properties to the third parties who have also entered into further transaction with another persons. Thus, treating the impugned order as final rights have been created in favour of third parties. If writ jurisdiction is exercised at this stage then it may cause injustice, inconvenience and unreasonable hardships to the persons in whose favour such rights have been created and would unsettle the things which are already settled.

6. In these circumstances, this is not a fit case wherein this Court should exercise its writ jurisdiction and this petition being devoid of any merits requires to be rejected and accordingly the petition is rejected. Rule is discharged. Interim relief stands vacated.

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